

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 99-0647P**

Cigarette Tax

For The Period Ending August 11, 1999

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer files CT-4A returns to order Cigarette Tax Stamps.

IC 6-7-1-17 (b) allows distributors who hold certificates and who are admitted to do business in the state of Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. Taxpayer was previously notified with a memo dated December 15, 1998, which states that the department would be sending collection notices for late payments. The memo was included with each invoice for at least the next two months.

Taxpayer requests the waiver of penalties as the mail is opened in Indiana but paid from out of state. Taxpayer states that the person receiving the mail did not timely forward the paperwork for processing. The Indiana Department of Revenue Deputy Controller called and informed the taxpayer that the invoice was not paid, and on October 13, 1999 the taxpayer remitted a check. Taxpayer normally pays ahead of time as verified by a batch of original invoices supplied at the time of hearing. Because of the processing problem, taxpayer had previously asked the department to mail the invoices to the Chicago office. In addition, the taxpayer moved to a new

location address during July, August, and September 1999. In checking departmental records it was determined that the taxpayer actually changed its location address on August 7, 1998.

A review of the taxpayer's payment history indicates it had no prior late payment penalties, other than the one never issued due to a telephone call from the taxpayer. The penalty was cancelled for invoice 319893, and an invoice issued for interest only. Taxpayer was aware of its responsibility to make payments timely.

I. **Tax Administration** –Penalty

**DISCUSSION**

Taxpayer's statements under Statement of Facts are not considered reasonable cause. However, taxpayer cites the Indiana Code Section IC 6-8.1-10-2(d) that states:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on his return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

Taxpayer emphasizes the term "willful neglect" and states it did not "willfully" neglect to make payment timely. However, the cite is two-fold. Even if the taxpayer was not willfully negligent, it did not show reasonable cause for the late payment. Taxpayer has made prior payments for the cigarette tax and is aware that a late payment penalty may be assessed for filing late.

The department finds that the penalty is proper.

**FINDING**

Taxpayer's protest is denied.